



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC FFT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$6,900 pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**MJ**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and MJ confirmed, that the tenant served the landlord with the notice of dispute resolution package and supporting documentary evidence. MJ testified, and the tenant confirmed, that the landlord served the tenant with its documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Issue – Amendment of Tenant's Application

The tenant did not initially make a monetary claim when filing his application in November 2021. In December 2021, the tenant amended his application to include the a monetary claim. He described the basis for this monetary claim as:

1. This 10 Day Notice is a way to evict me while not raising any suspicion under the Act.
2. Landlord is not in compliance with the Act.
3. The Landlord failed to comply with the Act at least six times when it was decided not to evict the six other tenants who had violated the Act, pursuant to Section 47.

4. In the alternative, if the Landlord complied with the Act, it was retaliatory and acted in bad faith.

5. In addition an in the further alternative, if the landlord complied with the act, it is conspiring with the six tenants and caretakers to undermine my disputant unfairly evict me.

6. I seek a monetary order for compensation for damages or loss under the act, pursuant to section 67, for retaliation against tenants for filing a legitimate dispute. Further I see compensation for landlord's breach of its duty of good faith when it chose not to evict any one of six tenants named in dispute, despite gross tenant violations, pursuant to section 47(1)(d) and (e) of the Act.

7. I am seeking an additional \$6,900, equivalent to one months rent for each tenant not served an eviction notice, for noncompliance, retaliation, bad faith, breach of contract and conspiracy.

However, in his written submissions he submitted at the time he made the original application, the tenant stated that he sought "a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$9,775.00, pursuant to Section 67."

MJ confirmed that she understood that the tenant was seeking \$9,775 as compensation for the reasons set out on the amendment.

As the tenant did not make a monetary claim in the initial application, as the description of the tenant's monetary claim in his written submissions states only that the tenant seeks compensation pursuant to section 67 (without providing particulars of this claim) and as the amendment cites section 67 as a basis for his monetary claim, I find it appropriate to amend the application to increase the amount of the monetary order to \$9,775.

Preliminary Issue

At the outset of hearing, I advised the parties that I was unsure if I had the power to grant the relief that tenant was seeking. I invited the parties to make submissions on this point. The tenant's submissions overlapped with his submissions on the merits of the case itself. The parties' submissions on the issue of whether I had authority to make the orders sought by the tenant took up all of the allotted time for the hearing. I advised that I would adjourn the hearing and reconvene it in the event I found I was able to grant the orders the tenant was seeking. If I found I was not, my decision would be final and there would be no reconvened hearing.

For the reasons stated below, I will not be reconvening the hearing, although I have found that I am able to grant a small portion of the relief sought by the tenant and am able to make a final decision on that issue, based on the submissions of the parties.

Issues to be Decided

Does an arbitrator of the Residential Tenancy Branch (the “**RTB**”) have the authority to grant the orders sought by the tenant?

Background and Evidence

The parties entered into a written tenancy agreement starting September 1, 2019. Monthly rent is \$1,167.25 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$575, which the landlord continues to hold in trust for the tenant.

1. Order that the landlord comply with the Act

On his application, the tenant alleges:

There are multiple violations of section 28 of the Residential Tenancy Act (RTA). The Landlord was made aware of breaches and failed to take reasonable steps to correct them.

In his written submissions, the tenant details these alleged breaches in some detail. He wrote:

4. There is a Smoker’s Corner located in a parking stall near to 24th Street entrance. The smokers (“the Smoking Tenants”) use cigarettes, vaping, and marijuana. The Smoker’s Corner is a privilege, and the Smoking Tenants are abusing this privilege.

5. [...] On November 8, 2021, [the tenant] wrote to his landlord [MJ] explaining the excessive marijuana smoke and the voyeur videos. The Smoking Tenants “have been sharing explicit videos of me.” [MJ] replied, “It is a problem that we will have to leave to an arbitrator to decide on”.

6. The Smoking Tenants are collecting in numbers and social bullying [the tenant] who has to walk past that area multiple times a day to get to his street-parked SUV. Every time he walks by, they are harassing him in some manner. Because they are collected in numbers. They are smoking marijuana. Some are drinking alcohol. There are kids there as well even after 9pm.

7. There are anywhere from 8 to 12 Smoking Tenants, including ["M", name redacted] who smokes. Usually there are 4 or 5 at a time. Sometimes only 2 or 3 smokers.
8. The same Smoking Tenants can "go for a smoke" sometimes 3-4 times per day, up until 11pm.
9. [The tenant] will often run errands all day and see the same smokers yapping on three separate occasions from morning till evening.
- 2
10. They can spend up to 2 hours at a time at the Smoker's Corner talking and gossiping about people. It is as if they believe the Smoker's Corner is an "observation deck" where they can convince themselves why they are better than everyone else and those superior beliefs will carry them until they meet again and they can demean the next person.
11. The Smoking Tenants gossip and harass [the tenant] when he walks by the Smoker's Corner.
12. [The tenant] does not know any of the Smoking Tenants.
13. [The tenant] is allergic to cigarette smoke and marijuana smoke makes him feel sick because it is a drug. [The tenant] has never taken illicit drugs.

During the hearing, MJ testified that the Smoking Corner is situated on the residential property in compliance with all relevant municipal and provincial bylaws. She testified that the tenant does not need to walk past the Smoking Corner to get to his vehicle, although walking past it is the most direct route from the rental unit to the vehicle's parking spot. The tenant did not dispute either of these points.

The tenant testified that the reason for the comments and bullying from the Smoking Tenants is that video recordings of him masturbating have been leaked online and the Smoking Tenants have discovered them. The tenant claimed that someone broke into his rental unit, installed a hidden camera which recorded this behaviour, and then broke in a second time to retrieve the camera and footage and posted it online. The tenant alleged that the Smoking Tenants are involved in the circulation of the videos.

The tenant testified that this is not the first time such an invasion of his privacy has occurred. He testified that in his previous building, his apartment was broken into in the same manner and videos of him masturbating were posted online. He testified that he is being targeted by "a gang" and that one or more of the Smoking Tenants is a member of the gang. MJ observed that this would imply that when the tenant moved into the residential property, a member of the gang allegedly targeting him just so happened to already reside there. The tenant agreed that this would have been the case.

The tenant speculated that members of the Smoking Tenants were acting as lookouts for other gang members and notifying them when the tenant had left the rental unit. The other gang members would then have the opportunity to enter the rental unit undetected. He testified that there was no obvious evidence of a break-in, which meant that those people breaking in must have obtained a copy of the rental unit key from the landlord.

MJ denied the landlord or any of its agent provided a copy of the rental unit key to anyone other than the tenant. She testified that landlord keeps a copy of the rental unit in locked up in case of emergencies. The building's cleaners or caretaker do not have access to the key.

As further evidence of the landlord's collusion with the Smoking Tenants and their "gang" to target the tenant, the tenant cited the fact that the Smoking Tenants knew his name. He testified that this was private information and that he never told them what it was.

MJ testified that the tenant's last name and unit number were listed on the building directory which is available to the public. Additionally, she testified that the tenant makes detailed public posts on his Facebook page about the leaked videos. She denied providing the Smoking Tenants with any private information of the tenants.

The tenant testified that he has reported these incidents to the RCMP, but that they have not laid any criminal charges. I do not have copies of any documents from the RCMP corroborating the existence of such reports or relating the status of any investigation.

The tenant also testified that another tenant whom he identified as "Jay" threatened to kill him on November 5, 2021. In his written submissions, he described the situation as follows:

67. On November 5, 2021, at about 8:15pm, [the tenant] returned to the parking lot. He slowly drove his sedan past the Smoker's Corner. A male tenant who later identified himself as "Jay" was standing on the road with his back to the road. There were 8-10 Smoking Tenants there including [redacted].

68. After [the tenant] parked his SUV on the street, he walked back toward the entrance and passed by the Smoker's Corner. This is when "Jay" yelled out, "Hey, [tenant's first name]!" Then "Jay" started calling him a "Prissy." Saying, "Hey you fucking Prissy!" and "Let me fucking tell you something, Prissy" multiple times and accusing [the tenant] of "trying to fucking run me over." It was apparent that "Jay" was drunk. He had a beer bottle in one hand and a vaping device in the other. He was disgruntled and angry. He continued to issue threats at [the tenant] and to be disorderly. [The tenant] remained calm and attempted to reason with a drunken man.

69. "Jay" said to [the tenant], "I'm going to break off your fucking leg and then stick it up your ass." [The tenant] attempted to reason with him. Clearly, he had not been run over. There was a woman there who was asking "Jay" to calm down. This indicated that "Jay" had been drunk before.

70. [The tenant] believes that the Smoking Tenants manipulated "Jay" to attack [the tenant] on their behalf. They did this by painting [the tenant] as a "gay" man and by suggesting that he runs over people, which is not true.

71. "Jay" would not stop. He stood in [the tenant's] face. "Jay" is over six feet and 250 pounds. He threatened [the tenant] multiple times, "Tomorrow, I'm going to get my fucking work truck and I'm going to run you over and kill you!" He wanted to fight.

72. Seeing that "Jay" was drunk, [the tenant] asked his lady friend to control him, defused the situation as best he could, and left before things got worse. He was upset that in addition to [harassment several of the Smoking Tenants] now his life was being threatened by a drunk and stupid tenant who was 40 pounds overweight.

73. About one hour later, [the tenant] knocked on the Caretaker's door. [The caretaker] answered. She had just woken up. She told [the tenant] to "call the police." She could do nothing.

The next day the tenant sent MJ a text message advising her of the incident and stating that he is entitled to quiet enjoyment as a tenant. MJ responded:

I am hearing that you are also distrusting [sic] others quiet enjoyment by videotaping them. I also have photos of it happening. I think at this point it is best you find other accommodations as soon as you are able.

The tenant argued that the conduct of the smoking tenants represents a breach of his quiet enjoyment that is guaranteed to him pursuant to Section 28 of the Act. Additionally, he argued that the fact his rental unit was broken into and illicit recordings of him were made represents a breach of his entitlement to reasonable privacy pursuant to that same section. He also argued that the conduct of "Jay" represents a breach of his quiet enjoyment.

MJ testified that she has fielded complaints from other tenants in the building about the tenant. she testified that the tenant on occasion has called her and discussed in graphic detail the contents of the videos. She testified that this makes her extremely uncomfortable. she stated that she understood that the tenant had open cases with the

RCMP and that that forum was the appropriate one for the tenant to deal with in light of the nature of the tenant's allegations.

2. Attempted Eviction

In the amendment to the application, the tenant indicated that the landlord had improperly attempted to end his tenancy in retaliation to him raising these complaints. In support of this he attached a 10-day notice to end tenancy for non-payment of rent dated December 7, 2021. He also attached an email from his bank confirming that he paid the outstanding arrears on December 11, 2021. At the hearing the tenant stated that he felt this tender notice was issued in bad faith by the landlord. He did not deny that he failed to pay rent when it was due.

Analysis

1. Order that the landlord comply with the Act

The tenant is correct to say that the Act guarantees him a right to quiet enjoyment. Section 28 of the Act states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- [...]

The tenant's claims for breaches of his right to quiet enjoyment fall into four distinct categories:

- 1) Rude comments from Smoking Tenants about the illicit videos;
- 2) Smoking Tenants conspiring with the landlord and a "gang" to break into his rental unit and covertly video tape him;
- 3) Smoking Tenants manipulating Jay into attacking the tenant; and
- 4) "Jay" confronting the tenant and threatening to kill him.

Section 62(4) of the Act states:

Director's authority respecting dispute resolution proceedings

62 (4) The director may dismiss all or part of an application for dispute resolution if:

- (a) there are no reasonable grounds for the application or part,
- (b) the application or part does not disclose a dispute that may be determined under this Part, or
- (c) the application or part is frivolous or an abuse of the dispute resolution process.

Based on the submissions of parties at the hearing, I find that the tenant's claims that the Smoking Tenants conspired with the landlord and a "gang" to break into the rental unit and make illicit recordings to be both frivolous and with any reasonable grounds. The tenant has offered only conjecture that this is the case. He grounded his argument on the facts that the Smoking Tenants know his name and that the landlord has a key to the rental unit. This is not a sufficient basis for a reasonable person to infer that there the Smoking Tenants and the landlord are conspiring against him.

Furthermore, given that the tenant has had illicit recordings of him leaked online before he moved into the residential property, it strains credulity to think that the Smoking Tenants or any employee of the landlord was a member of the "gang" who was making the videos.

Similarly, I do not find that there is any reasonable ground to find that the Smoking Tenants encouraged "Jay" to verbally attack the tenant. The tenant offers no evidence to substantiate this allegation, stating only that he "believes that the Smoking Tenants manipulated "Jay" to attack [the tenant] on their behalf." I do not find there is any reasonable ground for this part of the application.

I do not find that a landlord's duty to provide quiet enjoyment to a tenant extends to policing the interactions between occupants of the residential property that are unrelated to the provision of a tenancy. Landlords are not equipped to handle such disputes. I do not believe it is in keeping with the purpose of the Act to require a landlord to intervene in any and all disputes between occupants of a residential property. A landlord has few tools at its disposal to do so (mostly, the power of eviction). Such a mandate would be far too onerous to place on a landlord and would have a chilling effect on social interaction, if occupants had to fear eviction due anytime they came in conflict of any sort with another occupant of their building.

Rather, a landlord is responsible for providing quiet enjoyment to a tenant only so far as the deprivations of the enjoyment are related to the tenancy itself (for example, noises or odors emanating from one rental unit causing a disturbance to their neighbours generally). I do not find that rude comments made by one tenant to another in the parking lot of the residential property fall within this scope.

As such, I find that this part of the application does not disclose a dispute that may be determined under the Act. I dismiss this portion of the tenant's application.

Finally, the tenant raised the issue as to the adequacy of the landlord's response to the verbal assault and death threats from "Jay". He seeks an order that the landlord take some steps to address this issue beyond directing him to contact the RCMP. Such an order is within the scope of the RTB's jurisdiction. It is not uncommon for a landlord to be awarded an order of possession against the offending tenant due to such conduct (either pursuant to a section 47 notice or pursuant to section 56 of the Act).

In the circumstances, I do not find it is necessary to reconvene the hearing to address this issue. Based on the evidence presented at this hearing, I have sufficient information to make a final decision on this issue. I order that the landlord investigate the tenant's allegation that "Jay" confronted the tenant and threatened him with physical violence on November 5, 2021. Such an investigation would include reviewing security camera footage, speaking with potential witnesses (the tenant claims the Smoking Tenants were present at the incident), and speaking with "Jay" (if the landlord is able to identify him). Once this investigation is complete, the landlord should take whatever steps it finds appropriate (which may include issuing a warning letter or a notice to end tenancy). I do **not** require the landlord to share the results of the investigation with the tenant, although if the incident repeats itself, and the tenant makes a further application to the RTB, the landlord should be prepared to demonstrate that an investigation took place in compliance with this order.

2. Monetary Order

The bulk of the tenant's monetary claim rests on the landlord's failure to comply with the Act or that it conspired with the Smoking Tenants. I have already found that, except for how it dealt with "Jay", the tenant's claims are without merit. As such, the tenant cannot be entitled to any compensation in connection with them.

I do not find that the landlord's failure to investigate gives rise any monetary compensation, as there is no evidence before me that "Jay" has threatened the tenant (or indeed interacted with the tenant) since the night of the incident. Therefore, I do not find that the tenant has suffered any harm because of the failure to investigate the complaint.

The tenant also seeks compensation on the basis that the landlord acted in a retaliatory or bad faith manner in issuing the 10-day notice. This is a frivolous claim and without any merit. It is not disputed that the tenant failed to pay the amount specified on the 10-day notice. As such, the landlord was entirely within its rights to issue the notice.

The tenant is obligated to pay rent when it is due and failure to do this could jeopardize his tenancy. I do not find that by declining to waive its entitlement to any portion of rent, or allow rental arrears to accrue, amounts to the landlord acting in a retaliatory manner or in bad faith. I do not find the tenant is entitled to any amount of compensation due to the landlord issuing a valid notice to end tenancy for non payment of rent.

Accordingly, I dismiss the tenants claimed for a monetary order in its entirety.

As I have dismissed the bulk of the tenant's application, I decline to order that the landlord reimburse the tenant the cost of the filing fee.

Conclusion

I order the landlord to conduct an investigation into the incidents of November 5, 2021 involving the tenant and “Jay”.

I dismiss without leave to reapply all other parts of the application, pursuant to section 62(4) of the Act on the basis that as they are either frivolous, they have no reasonable grounds, or they do not disclose a dispute that may be determined under the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 23, 2022

Residential Tenancy Branch